

AMENDED IN ASSEMBLY APRIL 15, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 389**

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**Introduced by Assembly Member Saldana**

February 23, 2009

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An act to amend Sections ~~10236.12~~ 10236.1 and 10236.13 of, and to ~~add Section 10236.16 to repeal and add Section 10236.12 of~~, the Insurance Code, relating to insurance.

### LEGISLATIVE COUNSEL'S DIGEST

AB 389, as amended, Saldana. Long-term care insurance.

Existing law provides for regulation of insurers, including insurers issuing policies of long-term care insurance, by the Insurance Commissioner. Existing law *requires benefits under individual long-term care insurance policies issued before new premium rate schedules are approved to be deemed reasonable in relation to premiums if the expected loss ratio is at least 60%, calculated in a manner that provides for adequate reserving of the risk. This bill, for policies issued before new premium rate schedules are approved and for which rate revisions are filed on or after January 1, 2010, would deem benefits reasonable in relation to premiums if the premium rate schedules have a lifetime expected loss ratio of at least 60% of the premium scale in effect on December 31, 2009, plus 70% of premium increases filed on or after January 1, 2010.*

*Existing law* requires actuaries used by the commissioner to review rate applications submitted by insurers relative to long-term care insurance, whether by employment or by contract, to be members of

the American Academy of Actuaries with at least 5 years' relevant experience.

~~This bill would delete the requirement for 5 years' relevant experience and instead require that the members of the academy employed or contracted for this purpose be qualified to review long-term care insurance rates. The bill would authorize the commissioner to contract with qualified independent actuaries for this purpose. The bill would require the costs and expenses of the actuarial reviews to be charged to the insurer. The bill would authorize the commissioner to adopt regulations in this regard revise these qualifications, as specified, and would make other technical changes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 10236.1 of the Insurance Code is amended  
2     to read:

3     10236.1. (a) Benefits under individual long-term care insurance  
4     policies issued before new premium rate schedules are approved  
5     under Section 10236.11 shall be deemed reasonable in relation to  
6     premiums if the expected loss ratio is at least 60 percent, calculated  
7     in a manner that provides for adequate reserving of the long-term  
8     care insurance risk. ~~It~~

9     (b) For individual long-term care insurance policies issued  
10    before new premium rate schedules are approved under Section  
11    10236.11, and for which rate revisions are filed on or after January  
12    1, 2010, benefits shall be deemed reasonable in relation to the  
13    premium if the premium rate schedules have a lifetime expected  
14    loss ratio of at least 60 percent of the premium scale in effect on  
15    December 31, 2009, plus 70 percent of premium increases filed  
16    on or after January 1, 2010, calculated in a manner that provides  
17    for adequate reserving of the long-term care insurance risk.

18    (c) In evaluating the expected loss ratio, due consideration shall  
19    be given to all relevant factors, including the following:

20    ~~(a)~~

21    (1) Statistical credibility of incurred claims experience and  
22    earned premiums.

23    ~~(b)~~

24    (2) The period for which rates are computed to provide coverage.

- 1 ~~(e)~~
- 2 (3) Experienced and projected trends.
- 3 ~~(d)~~
- 4 (4) Concentration of experience within early policy duration.
- 5 ~~(e)~~
- 6 (5) Expected claim fluctuation.
- 7 ~~(f)~~
- 8 (6) Experience refunds, adjustments, or dividends.
- 9 ~~(g)~~
- 10 (7) Renewability features.
- 11 ~~(h)~~
- 12 (8) All appropriate expense factors.
- 13 ~~(i)~~
- 14 (9) Interest.
- 15 ~~(j)~~
- 16 (10) Experimental nature of the coverage.
- 17 ~~(k)~~
- 18 (11) Policy reserves.
- 19 ~~(l)~~
- 20 (12) Mix of business by risk classification.
- 21 ~~(m)~~

22 (13) Product features, such as long elimination periods, high  
23 deductibles, and high maximum limits.

24 *(d) Notwithstanding any other provision of this section, for rate*  
25 *revisions filed on or after January 1, 2010, the commissioner may*  
26 *approve an application for a rate revision based on less than a 70*  
27 *percent loss ratio for the portion attributable to the rate increase*  
28 *if an insurer can demonstrate that the rates are necessary to protect*  
29 *the financial condition of the insurer, including further reductions*  
30 *in capital and surplus.*

31 ~~SECTION 1. Section 10236.12 of the Insurance Code is~~  
32 ~~amended to read:~~

33 ~~10236.12. All actuaries used by the commissioner to review~~  
34 ~~rate applications submitted by insurers pursuant to this chapter,~~  
35 ~~whether employed by the department or secured by contract, shall~~  
36 ~~be members of the American Academy of Actuaries qualified to~~  
37 ~~review long-term care insurance rates. The commissioner may~~  
38 ~~contract with qualified independent actuaries to review rate~~  
39 ~~applications submitted by insurers pursuant to this chapter. The~~  
40 ~~costs and expenses of the actuarial reviews of premium rate~~

~~schedules subject to Section 10236.11, 10236.14, or 10236.15 shall be charged to the insurer.~~

*SEC. 2. Section 10236.12 of the Insurance Code is repealed.*

~~10236.12. All actuaries used by the commissioner to review rate applications submitted by insurers pursuant to this chapter, whether employed by the department or secured by contract, shall be members of the American Academy of Actuaries with at least five years' relevant experience in long-term care insurance industry pricing. If the department does not have actuaries with the experience required by this section, the commissioner shall contract with actuaries to review all rate applications submitted by insurers pursuant to this chapter. If the department has actuaries that have experience required by this section, but not enough of those experienced actuaries to perform the volume of work required by this chapter, the commissioner may contract with independent actuaries, as necessary.~~

~~If the commissioner contracts with independent actuaries, the commissioner shall promulgate regulations no later than January 1, 2002, to maintain the confidentiality of rate filings and proprietary insurer information and to avoid conflicts of interest.~~

*SEC. 3. Section 10236.12 is added to the Insurance Code, to read:*

*10236.12. All actuaries used by the commissioner to review rate applications submitted by insurers pursuant to this chapter who are employees of the department shall be members of the American Academy of Actuaries, with at least five years' relevant experience in long-term care insurance industry pricing or alternatively who shall meet the professional requirements to issue a "prescribed statement of actuarial opinion."*

*If the department does not have sufficient employees who are actuaries meeting the requirements of this section to perform the volume of work required by this chapter, the commissioner may contract, as necessary, with independent actuaries who shall be members of the American Academy of Actuaries with at least five years' relevant experience in long-term care insurance industry pricing.*

*If the department has employees who are actuaries, and independent actuaries under contract to the department, both meeting the requirements of this section to review rate applications, an insurer may generally choose between having the rate*

1 application reviewed by either employees or independent actuaries  
2 under contract to the department. The costs and expenses of  
3 reviews by independent actuaries under contract to the department  
4 shall be charged to the insurer. However, the department shall  
5 have the discretion to require a review by independent actuaries.

6 Employees of the department who are actuaries and who are  
7 otherwise qualified to review rate applications but who do not  
8 meet the requirements of this section may assist an independent  
9 actuary under contract to the department.

10 If the commissioner contracts with independent actuaries for  
11 purposes of this section, the commissioner shall promulgate  
12 regulations to maintain the confidentiality of rate filings and  
13 proprietary insurer information and to avoid conflicts of interest.

14 ~~SEC. 2.~~

15 SEC. 4. Section 10236.13 of the Insurance Code is amended  
16 to read:

17 10236.13. No insurer may increase the premium for an  
18 individual or group long-term care insurance policy or certificate  
19 approved for sale under this chapter unless the insurer has received  
20 prior approval for the increase from the commissioner.

21 The insurer shall submit to the commissioner for approval all  
22 proposed premium rate schedule increases, including at least all  
23 of the following information:

24 (a) Certification by an actuary, who is a member of the American  
25 Academy of Actuaries and who ~~is in good standing with~~ meets the  
26 qualification standards of that organization, that:

27 (1) If the requested premium rate schedule increase is  
28 implemented and the underlying assumptions, which reflect  
29 moderately adverse conditions, are realized, no further premium  
30 rate schedule increases are anticipated.

31 (2) The premium rate filing is in compliance with the provisions  
32 of this section.

33 (b) An actuarial memorandum justifying the rate schedule  
34 change request that includes all of the following:

35 (1) Lifetime projections of earned premiums and incurred claims  
36 based on the filed premium rate schedule increase, and the method  
37 and assumptions used in determining the projected values,  
38 including reflection of any assumptions that deviate from those  
39 used for pricing other forms currently available for sale.

1 (A) Annual values for the five years preceding and the three  
2 years following the valuation date shall be provided separately.

3 (B) The projections shall include the development of the lifetime  
4 loss ratio.

5 (C) For policies issued with premium rate schedules approved  
6 under Section 10236.11, the projections shall demonstrate  
7 compliance with subdivision (a) of Section 10236.14. For all other  
8 policies, the projections shall demonstrate compliance with Section  
9 10236.1.

10 (D) If the commissioner determines that a premium rate increase  
11 is justified due to changes in laws or regulations that are  
12 retroactively applicable to long-term care insurance previously  
13 sold in this state, then:

14 (i) The projected experience should be limited to the increases  
15 in claims expenses attributable to the changes in law or regulations.

16 (ii) If the commissioner determines that potential offsets to  
17 higher claims costs may exist, the insurer shall be required to use  
18 appropriate net projected experience.

19 (2) Disclosure of how reserves have been incorporated in this  
20 rate increase.

21 (3) Disclosure of the analysis performed to determine why a  
22 rate adjustment is necessary, which pricing assumptions were not  
23 realized and why, and what other actions taken by the company  
24 have been relied on by the actuary.

25 (4) A statement that policy design, underwriting, and claims  
26 adjudication practices have been taken into consideration.

27 (5) If it is necessary to maintain consistent premium rates for  
28 new certificates and certificates receiving a rate increase, the  
29 insurer shall file composite rates reflecting projections of new  
30 certificates.

31 (c) A statement that renewal premium rate schedules are not  
32 greater than new business premium rate schedules except for  
33 differences attributable to benefits, unless sufficient justification  
34 is provided to the commissioner.

35 (d) Sufficient information for approval of the premium rate  
36 schedule increase by the commissioner.

37 (e) The provisions of this section are applicable to all individual  
38 and group policies issued in this state on or after July 1, 2002.

39 ~~SEC. 3. Section 10236.16 is added to the Insurance Code, to~~  
40 ~~read:~~

1     ~~10236.16. The commissioner may adopt regulations to~~  
2     ~~implement the provisions of this article.~~

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